



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ELECTRONIC MAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

Mr. Skip Schembari
HVAC Performance Products, Inc.
1270 Lincoln Avenue, Number 1400
Pasadena, California 91103
Email: hvacinc@att.net

RE: HVAC Performance Products, Inc.
FIFRA Notice of Warning
Case File No. FIFRA-04-2021-0805

Dear Mr. Schembari:

The U.S. Environmental Protection Agency has obtained evidence indicating that HVAC Performance Products, Inc. appears to be in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). On or about March 21, 2020, FedEx the licensed customs broker for HVAC Performance Products, Inc., incorrectly filed an entry in the U.S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) system, showing that the product being imported was not a pesticide or pesticide device. The shipment contained pesticide device products, specifically UV bulbs, and arrived at the Port Memphis, Tennessee FedEx Hub under entry number 799-65100736. Upon further review of the copies of the labels for the UV lamps, the EPA determined that the label did not include the EPA Establishment Number. On or around April 3, 2020, the company was issued a Notice of Refusal letter for not submitting a pesticide entry and for importing a pesticide device that did not include an EPA Establishment Number.

On or about April 22, 2020, UPS the licensed customs broker for HVAC Performance Products, Inc., incorrectly filed an entry in the CBP ACE system, showing that the product being imported was not a pesticide or pesticide device. The shipment contained pesticide device products, specifically UV bulbs, and arrived at the Port of Louisville, Kentucky UPS Hub under entry number SCS-02296814 on or about April 22, 2020. On May 1, 2020, HVAC Performance Products, Inc. notified the EPA that the label did not include an EPA Est. No. On May 11, 2020, the company provided the EPA a copy of the label and informed them that they put the foreign EPA Establishment Number on the label (after import). On or around May 15, 2020, UPS replaced the entry with SCS-05360435. On June 4, 2020, the entry was given a may proceed.

On or about August 29, 2020, UPS the licensed customs broker for HVAC Performance Products, Inc., incorrectly filed an entry in the CBP ACE system, showing that the product being imported was not a pesticide or pesticide device. The shipment contained pesticide device products, specifically UV bulbs, and arrived at the Port Memphis, Tennessee FedEx Hub under entry number 799-84768570 on or about

August 10, 2020. Upon further review of the copies of the labels for the UV lamps, the EPA determined that the lamps were misbranded due to the absence of a precautionary statement and directions for use statement. On September 1, 2020 and September 3, 2020, the entry was filed and replaced with entry numbers 799-87802194 and 799-88243257. On November 17, 2020, the entry was denied for importing a pesticide device that did not include a precautionary statement and directions for use statement.

After further review of the copies of the labels provided for the UV lamps in the entries outlined above, the EPA determined that the lamps were misbranded due to one or more of the following: 1) The absence of a precautionary statement; 2) The absence of a directions for use statement; 3) The absence or incorrect EPA Est. No. Pursuant to 40 C.F.R. § 156.10(a) and Section 2(q)(1)(A) of FIFRA, a pesticide or a device declared subject to FIFRA pursuant to 40 C.F.R. § 152.500, is misbranded if its labeling does not include a precautionary statement and directions for use statement. Pursuant to Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), it shall be unlawful for any person in any State to distribute or sell to any person any device which is misbranded. Further, one or more entries outlined above were not filed, prior to the import of this product. Pursuant to FIFRA 12(a)(2)(N), it is unlawful for failure to file reports required by the Act.

In response to the apparent violation of FIFRA, the EPA is issuing this Notice of Warning (NOW) to HVAC Performance Products, Inc. pursuant to FIFRA Section 9(c)(3), 7 U.S.C. § 136g(c)(3). The EPA has determined at this time that a NOW is the appropriate enforcement response for the company's apparent violation of FIFRA.

Since your company may be classified as a small business, you may want to review the Information Sheet "U.S. EPA Small Business Resources," which can be found on the internet at: www.epa.gov/compliance/small-business-resources-information-sheet. This document will provide you with information regarding compliance and rights you may be entitled to under the Small Business Regulatory Enforcement Fairness Act.

If you have any questions about this letter, and/or would like to discuss the above-stated findings by the EPA, or would like a copy of the Information Sheet, please contact Kimberly Tomczak of my staff at (404) 562-8962 or by email at tomczak.kimberly@epa.gov.

Sincerely,

Kimberly Bingham
Chief
Chemical Safety and Land Enforcement Branch

cc: Mr. Matt Salazar; Region 9 (Salazar.Matt@epa.gov)